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Time-share scam results in prison terms

The man who presided over a highly sophisticated, nationwide telemarketing fraud operation that victimized over 38,000 people out of \$15.4 million was sentenced October 21 in federal court to 7 years in prison.

United States Attorney Michael J. Sullivan and Kenneth R. Jones, Inspector in Charge of the U.S. Postal Inspection Service in New England, announced that Donald L. Gonczy, age 68, of Hillsboro Beach, Florida, was sentenced by Chief U.S. District Court Judge William G. Young to 7 years' imprisonment, to be followed by 3 years of supervised release. Chief Judge Young also imposed a fine on Gonczy of approximately \$142,000, representing all of his assets held in his Austrian bank account. Gonczy was additionally barred from any employment involving sales.

At the sentencing hearing, Chief Judge Young explained his sentence by stating that the telemarketing fraud case "was the most corrupt, the most extensive and the most sophisticated mail fraud scheme that this Court has ever seen."

The Arizona Department of Real Estate received several complaints about companies using schemes similar to Gonczy's, including one of Gonczy's companies, Resort Investment Trust. The Department issued a cease & desist order to one company, Century 21 Resort Mart Real Estate, and obtained voluntary agreements to stop directing advertising to Arizona residents from other time-share resale companies.

"This case demonstrates the great lengths people will go to perpetrate their fraud," commented U.S. Attorney Sullivan. "As reflected by this comprehensive prosecution, this Office remains committed to aggressively pursuing those individuals who prey upon the

Recovery fund pays \$30,000 when agent fails to disclose structural problem

A Tucson couple was awarded \$30,000 from the Arizona Real Estate Recovery Fund by order of Pima County Superior Court Judge Lina Rodriguez.

The award, made to Robert Collier and Judith Henderson in September 2002, was a partial reimbursement of a \$67,000 judgment against Tucson real estate broker Jennifer A. Fuller, aka Jennifer E. Fuller. The judge found that Fuller had engaged in fraud by failing to disclose known structural defects in her Tucson house that she sold to Collier and Henderson.

Fuller purchased the house in 1994 despite having received a seller's property disclosure statement (SPDS) that disclosed "earth movement or settlement problems..." and stated that settlement through the kitchen and dining room structure was repaired.

In 1995, Fuller hired a geotechnical engineer to investigate the condition of the house. The engineer's report disclosed window movement and numerous cracks in floors and walls, and stated the primary cause of the damage was lateral movement in the underlying soil.

Fuller decided to sell the house and signed a contract with a prospective buyer in September 1997. She provided an SPDS that stated "previous

unsuspecting public to line their own pockets—whether it is through telemarketing fraud, securities fraud or other white collar crimes."

Gonczy, the leader of this complex telemarketing scam, pleaded guilty after the first week of his trial in June 2002. He has been in federal custody since he was arrested in St. Maarten, Netherlands Antilles, on these charges in January 2001. Seven other defendants, including three of Gonczy's children

owner within two years of building stitched concrete and replaced tile in the kitchen." The prospective buyer canceled the contract saying that Fuller's "written disclosure in the SPDS...regarding settlement problems directly contradicted [her] previous verbal testimonials concerning the structural history of the property."

In April 2000, Fuller listed the house for sale with Hacienda Properties. A Tucson real estate agent presented Fuller with a contract to purchase the house for \$380,000 from Collier and Henderson. Fuller signed the contract and completed an SPDS stating that there were no structural defects.

At the trial, a real estate appraiser testified that even if the house was repaired, "the marketplace will set forth a stigma and a resultant discount in the potential purchase price..." of from five to 10 percent, or \$19,000 to \$38,000 which the appraiser described as the "typical discount." The court chose to award the high end—\$38,000—together with \$14,000 punitive damages, \$11,000 in attorney fees and costs, and \$4,300 prejudgment interest.

Fuller's real estate license was terminated based on the payment from the Recovery Fund.

and his son-in-law, have already been convicted for participating in this scheme to defraud.

Earlier this fall, Gonczy's son, Scott Gonczy, was sentenced to 3 years' and 10 months' imprisonment. Gonczy's daughter, Jill Gonczy Upton, who cooperated with the government, received a sentence of 3 months' community confinement, to be followed by one year and 3 months of home detention. Her

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The status of electronic notarization

by Thomas A. Stoops

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AR.S. § 41-351 through § 41-369 were added to the laws of the State of Arizona, effective July 18, 2000, providing for an outline of the adoption of electronic notarization. Many in the real estate legal communities were eager to utilize electronic notarization because of its inherent speed. Anyone who has had to sweat a closing because a document had to be notarized in an outlying county or in another state and returned prior to the deadline can understand the importance of this advance.

While the statutes provide quite a bit of detail concerning electronic notaries, the last of these statutes, A.R.S. § 41-369 states, "The secretary of state shall adopt rules pursuant to chapter 6 of this title that establish policies procedures, fees and any other duties or services required by this article." In other words, the statutes provided an outline for attaining a goal and handed the task of establishing procedures to

reach the goal to the secretary of state. Since then, most people in the legal and real estate communities have heard nothing more about this worthy new advance.

Recently, in an effort to ascertain what progress had been made toward the adoption of the policies and procedures required by the article, I contacted the secretary of state's office and, was directed to Russ Savage who has had a continuing involvement in the process of adoption of the standards. Mr. Savage explained that because of the rapid change in the technology, there has been some caution in implementing the standards, but that it was his expectation that the rule-making process would be completed by the end of 2002. Mr. Savage stated that the Maricopa County Recorder's Office has been accepting a limited number of electronic notarizations from out of state for the past few months, provided those notarizations meet certain standards. With regard, to the electronic notarizations from within Arizona, the recorder's office will accept them once there is an official process

for doing so.

At present, the delay is not the technology or the statutes, it is getting administrative rules approved. Currently, these rules are being examined by the state attorney general's office.

As Mr. Savage explained, the basic process for doing an electronic notarization involves taking the notary signature and stamp and turning those into an electronic form. The technology to do so is called "PKI" (public key infrastructure), which allows notaries to sign a document digitally (not really an image of the signature) through a mathematical process which "locks down" what is being signed so that it cannot be changed without being detected, and links the notary to the item as the person who locked it down. Included in the process is an indication of the time that the notarization was performed and the information about the individual notary. Basically, you have the information in the seal/stamp, the signature, and date. Notaries are provided with what Mr. Savage refers to as a "token." The notary has the ability

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The 'buyer reasonable disapproval' process in the AAR purchase contract

by K. Michelle Lind

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The AAR Residential Resale Purchase Contract allows the buyer 10 days (or other specified number of days) after acceptance of the Contract to conduct any inspections and give written notice to the seller of any items reasonably disapproved (Lines 235-237). This time period is defined as the Inspection Period.

During the Inspection Period, the buyer must complete AAR's Buyer's Inspection Notice and Seller's Response form (or equivalent). If the buyer reasonably disapproves of any aspect of the property, the buyer must complete the form, specify the items disapproved, and state whether the buyer elects to either immediately cancel the Contract or provide the seller an opportunity to correct the items disapproved. If the buyer cancels the Contract, the buyer's earnest money should be returned. If

the buyer provides the seller an opportunity to correct the items, the seller must respond in five days and indicate whether or not the seller is willing to correct all, some or none of the items. If the seller refuses to correct any of the items disapproved, the buyer may, within five days of receipt of the seller's response, either cancel the Contract or proceed with the transaction without the correction of the items not agreed to in writing (Lines 238-253).

What is "reasonable"?

The Contract allows the buyer to give the seller notice of "any items reasonably disapproved."

Defining "reasonable" out of context is difficult. Disapproval of any aspect directly related to the property that logically should be corrected, and such correction would cost the buyer money is probably reasonable. However, disapproving of the property just because of "buyer's remorse" or because the buyer has had a change of

heart or change of circumstances is not reasonable.

If the buyer elects to cancel the Contract, must the buyer give written notice of what items the buyer reasonably disapproves?

Yes. The Contract requires that if the buyer reasonably disapproves of an item, the buyer must deliver to the seller written notice of the items disapproved and state the buyer's election.

What if the seller believes the disapproval is unreasonable?

If the seller believes the buyer's disapproval is unreasonable, the seller should respond to the buyer's notice, in writing, stating specifically why the disapproval is not reasonable. A copy of the seller's response should be delivered not only to the buyer, but to the escrow company as well. The seller must also be prepared to supply documentation or evidence that the buyer's

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Jerry Holt

News From The Commissioner

A dios muchachos, compañeros de me vida. It's been 11 years plus since Governor Fife Symington appointed me on May 20, 1991 to serve as this great state's real estate commissioner and it has truly been a wonderful experience.

My deepest appreciation and heartfelt thanks go to Governor Symington for the original appointment and to Governor Jane Dee Hull for keeping me on. Both have been terrific bosses.

I believe my time has been successful and it would not have been so had it not been for the loyalty and excellent work turned out by the people who now earn and who have earned their livings working for the Arizona Department of Real Estate.

When I arrived, I found the department relied on typewriters, index cards and microfilm to generate and keep track of information. As I leave, I see one of the best computerized systems found in any regulatory agency to issue and renew licenses, to keep track

of licensees, and to aid in disciplining those who choose to violate the law or rules.

My tenure with the department began before the internet existed. Now, we have what I believe is the finest, most informative and easiest-to-use web site of any in state government.

Somehow, although the cost of doing business has risen over the past 11 years, the Legislature has seen fit to give us virtually the same funding appropriation every year, and the improvements we've made have been made in spite of a very slim budget and with fewer people in the Department than I found back in 1991.

Every single ADRE employee has contributed greatly to this success, and so my thanks goes to each and every one of you for the high quality of your efforts and achievements.

Also my thanks go to the Real Estate Advisory Board, the Arizona Association of Realtors and the Real Estate Educators Association for your support, advice, criticism and com-

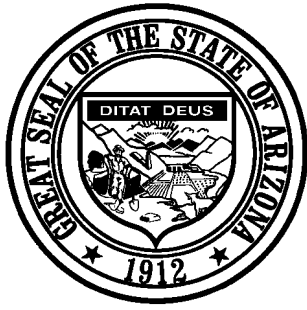
ments which have served to improve my character and leadership. I will be forever grateful.

Some have asked how I plan to spend my retirement. Next summer I plan to travel north to cooler weather. What a relief that will be! Then I'll return to Lake Havasu City and get involved in some action of some kind. I'll probably reactivate my real estate broker's license and let nature take its course. Perhaps I'll do some teaching. At any rate, I don't plan to sit around and vegetate. Life is too precious to waste.

Of course, there's always the boat and the exploration and re-exploration of the lakes of the Colorado River, and the dune buggy and the hills it will climb. I'm looking forward to it, but at the same time, I will truly miss the people with whom I've worked and the gratification that has come with being your Real Estate Commissioner.

Thanks to all of you. It's been a great ride!

Vayan con Diós mis amigos.



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2910 N. 44th Street, Suite 100
Phoenix, Arizona 85018
(602) 468-1414
Fax (602) 468-0562

400 W. Congress, Suite 523
Tucson, Arizona 85701
(520) 628-6940
Fax (520) 628-6941

Jane Dee Hull
Governor

Jerry Holt
Commissioner

Charles M. Downs
Editor

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It's been a great 11 years

In 1991 I received a phone call from Jerry Holt who told me he had been appointed real estate commissioner. "How would you like to be my public information officer?" he asked. I took about a minute to decide to quit my job as a reporter with the Lake Havasu City Herald newspaper and head for Phoenix. The new job, it turned out, included writing and editing this publication.

A few years later, Jerry said "What do you know about the internet?" I had never heard of it. "Look at it and get back to me. I think we should have a web site." I bought a book titled "Teach yourself web publishing in a week," and, sure enough, in a week we had a web site. That first version was pretty crude, but it has matured and is now one of the largest, state government web sites in Arizona. More than 10,000 visitors visit the site each month.

Working for the department under Jerry Holt has been a wonderful experience. I'm deeply indebted to him for rescuing me from the sometimes tedious job of working for a small-town newspaper and encouraging me to expand my skills.

Now, it's time to leave the department. I'll miss seeing my friends here each day, but I have a wonderful new opportunity at the Arizona School of Real Estate & Business. I'll see some of you there.

Charlie Downs

**The mission of the
Arizona Department of Real Estate
is to safeguard and promote the public interest
through timely and capable assistance,
fair and balanced regulation,
and sound and effective education.**

ADMINISTRATIVE ACTIONS

APPLICATIONS DENIED

02A-074

David A. Rambow
Scottsdale

DATE OF ORDER: November 1, 2002

FINDINGS OF FACT: In his application for a real estate salesperson's license, Petitioner disclosed three decisions and orders issued by the Registrar of Contractors revoking his contractor's license and awarding a \$15,000 payout from the Contractors' Recovery Fund. He has failed to satisfy that judgment.

VIOLATIONS: Petitioner failed to establish that he is a person of honesty, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7). Petitioner violated the terms of a civil judgment and an administrative order, in violation of A.R.S. § 32-2153(B)(9).

DISPOSITION: Petitioner's license application is denied.

CONSENT ORDERS

02A-135

Richard M. Vullo, Jr.
Tempe

DATE OF ORDER: October 30, 2002

FINDINGS OF FACT: Respondent, who was licensed as a real estate salesperson, notified the Department of his October 2001 conviction for Aiding and Assisting in the Filing of a False Tax Return, a class E felony, in U.S. District Court. He was sentenced to 16 months in jail (community confinement, and placed on supervised release for one year.

VIOLATIONS: Grounds exist to revoke Respondent's real estate salesperson's license under A.R.S. §§ 32-2153(B)(2), (B)(5), (B)(7) and (B)(10) and A.R.S. § 32-2130(E).

DISPOSITION: Respondent's real estate salesperson's license is revoked.

02A-120

Brian H. Ford
Cave Creek

DATE OF ORDER: November 6, 2002

FINDINGS OF FACT: In his application for a real estate salesperson's license, Petitioner disclosed a 1998 DUI conviction and a suspension of his FAA Commercial Pilot Certificate due to the failure to disclose the DUI conviction.

VIOLATIONS: Petitioner did not demonstrate that he was a person of honesty, truthfulness and good character, in violation of A.R.S. § 32-2153(B)(7). He has violated FAA rules that involve substantial misrepresentation in violation of A.R.S. § 32-2153(B)(10).

DISPOSITION: The Department shall issue Respondent a two-year provisional real estate salesperson's license subject to certain terms and conditions.

02A-146

John O. Dryer
Tonto Basin

DATE OF ORDER: October 31, 2002

FINDINGS OF FACT: Respondent, who was licensed as a self-employed broker, notified the Department that he was found guilty of Tam-

pering with Physical Evidence, a class 6 felony. VIOLATIONS: Respondent was convicted of a felony in violation of A.R.S. § 32-2153(B)(2). As a result, Respondent did not demonstrate that he was a person of honesty, truthfulness and good character in violation of A.R.S. § 32-2153(B)(7).

DISPOSITION: Respondent's real estate broker's license is revoked.

02A-127

Darren L. Gould
Mesa

DATE OF ORDER: November 13, 2002

FINDINGS OF FACT: In his application for a real estate salesperson's license, Petitioner disclosed a 1997 conviction for attempting to obtain a credit card by fraudulent means, and a 1992 DUI conviction.

VIOLATIONS: Petitioner engaged in conduct which constituted fraud or dishonest dealings in violation of A.R.S. § 32-2153(B)(5). He did not demonstrate he was a person of honesty, truthfulness and good character, pursuant to A.R.S. § 32-2153(B)(7). He violated state laws relating to theft, fraud, substantial misrepresentation or dishonest dealings in violation of A.R.S. § 32-2153(B)(10).

DISPOSITION: The Department shall issue Petitioner a two-year provisional real estate salesperson's license subject to certain terms and conditions.

01A-103

Jerry A. Brunk and Land-On-It, LLC.
Scottsdale

DATE OF ORDER: November 13, 2002

FINDINGS OF FACT: Brunk is the managing member, an officer and the designated broker for Land-On-It, a licensed real estate entity broker. In May 2001, Brunk was convicted of aggravated assault, a class 4 felony, and misdemeanor DUI and is presently serving felony probation.

VIOLATIONS: Brunk has been convicted of a felony in violation of A.R.S. § 32-2153(B)(2). DISPOSITION: Brunk's real estate broker's license shall be suspended until he is discharged from felony probation at which time he shall be issued a two-year provisional license as an associate broker subject to certain terms and conditions. During the entire period of Brunk's license suspension and provisional license, Land-On-It LLC's entity broker's license shall remain on inactive status.

01A-083

Marvin R. Arrowood
Taylor, Mich.

DATE OF ORDER: November 13, 2002

FINDINGS OF FACT: In August 2002, Respondent notified the Department's Compliance Officer that he was unable to comply with the body fluid testing requirements of an October 2001 Consent Order, and opted for voluntarily license revocation.

VIOLATIONS: By failing to comply with the

terms of the consent order, Respondent disregarded or violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, in violation of A.R.S. §§ 32-2153(A)(3), (A)(24) and (B)(9). DISPOSITION: Respondent's real estate salesperson's license is revoked.

01A-121

Mike Van Sickle, Jeffrey A. Ferez and Investors Commercial Realty, Inc.
Phoenix

DATE OF ORDER: November 14, 2002

FINDINGS OF FACT: Van Sickle is the designated broker of Investors Commercial Realty. Ferez was an associate broker employed by Van Sickle. Ferez and Van Sickle represented the sellers of a mobile home park. As a result of a law suit brought by the buyer, Petitioners were found liable for false representations under claims for consumer fraud and negligent misrepresentation.

VIOLATIONS: Petitioners violated provisions of Arizona Revised Statutes, Title 32, Chapter 20 and Commissioner's Rules in violation of A.R.S. § 32-2153(A)(3). They demonstrated negligence in performing acts for which a license is required, in violation of A.R.S. § 32-2153(A)(22). They made omissions of material fact, in violation of A.R.S. § 32-2153(B)(3). Petitioners violated Arizona laws relating to real estate, in violation of A.R.S. § 32-2153(B)(10). They breached their duty to deal fairly with all parties to a transaction, in violation of A.A.C. R4-28-1101(A).

DISPOSITION: Van Sickle and Investors Commercial Realty each to pay a civil penalty in the amount of \$1,000. Ferez to pay a civil penalty in the amount of \$10,000. Van Sickle and Ferez shall each attend 12 hours of approved continuing education in addition to hours required for license renewal.

02A-139

Brandon L. Martini
Phoenix

DATE OF ORDER: November 14, 2002

FINDINGS OF FACT: Respondent, licensed as a real estate salesperson, was convicted in May 2002 of attempting to possess a dangerous drug for sale, a class 3 felony, and attempting to possess marijuana for sale, a class 4 felony. Respondent is currently on probation for the convictions.

VIOLATIONS: Respondent has been convicted of a felony in violation of A.R.S. § 32-2153(B)(2). He has not demonstrated that he is a person of honesty, truthfulness and good character in violation of A.R.S. § 32-2153(B)(7). Pursuant to A.R.S. § 32-2130(E), the Department shall not renew the license of a person who is on probation for a felony.

DISPOSITION: Respondent's real estate salesperson is revoked.

01A-140

Christopher J. Bridgemen
Glendale

DATE OF ORDER: November 19, 2002

Continued on page 6

Actions

Continued from page 5

FINDINGS OF FACT: The Department issued Respondent a two-year provisional real estate salesperson's license by Consent Order in December 2001 based on certain terms and restrictions, among them the prohibition of the use of alcohol and illegal drugs and submission of body fluid tests. Respondent tested positive for cocaine in a body fluid test conducted on October 15, 2002 and thereby violated the Consent Order..

VIOLATIONS: Respondent failed to comply with the terms of a consent order granting him a provisional license and has disregarded or violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, in violation of A.R.S. §§ 32-2153(A)(3), (A)(24) and (B)(9).

DISPOSITION: Respondent's real estate salesperson's license is revoked.

Disapproval

Continued from page 2

disapproval of the item is unreasonable. For example, if the buyer gives notice of disapproval of the condition of the roof, the seller should be prepared to submit the statement of a roof expert that the roof is in excellent condition.

Is the buyer entitled to disapprove of cosmetic items?

No. The Contract specifically excludes cosmetic items from the items that the buyer may reasonably disapprove (Line 236). Like the term "reasonable," the term "cosmetic" is difficult to define in a vacuum. However, the buyer is not entitled to disapprove of any items concerning the property that are related only to its appearance. For example, the color of the wall would be a cosmetic item.

Why is the AAR's Buyer's Inspection Notice and Seller's Response form required?

The form is required to encourage uniformity of practice. Additionally, the form requires the signatures of both buyers, and if applicable, both sellers. The signatures of both buyers are required to insure that the buyers are in agreement as to the items disapproved and their election. If the seller agrees to make repairs or corrections, the statute of frauds requires the signatures of both sellers because the agreement is a modification of the Contract. Finally, the form gives both parties additional information on the inspection and notice of disapproval process.

Should the buyer state in the written notice of disapproval what

type of "correction" the buyer expects?

Yes. If the buyer elects to allow the seller an opportunity to correct the items disapproved, the buyer should state in the notice how the item must be corrected. For example, if termites are found, must the entire house be treated, or is spot treatment sufficient?

Should the buyer's broker give notice of reasonable disapproval on behalf of the buyer?

No. The buyer is obligated to make the buyer's election, either to cancel or give the seller an opportunity to correct the items, sign and cause the notice to be delivered to the seller. Buyer's brokers should obtain both buyers' signatures on the notice to insure that both agree to the items disapproved and their election.

Must both buyers and both sellers sign the Inspection Notice and Seller's Response form?

Yes. If the seller agrees to correct the items disapproved by the buyer, the agreement constitutes a modification of the Contract, which must be in writing and signed by the parties to be charged to be enforceable.

What if the buyer does not give written notice to the seller during the Inspection Period?

The buyer's failure to give the seller written notice of items disapproved during the Inspection Period is deemed to be the buyer's election to proceed with the transaction and close escrow without the correction of any property items (except for warranted items).

What happens if the seller fails to respond to the buyer's written notice of items disapproved?

The effect of the seller's failure to respond to the buyer's written notice of disapproval is the same as if the seller had refused to correct any of the items. The buyer has five days after the expiration of the time period for seller's response to elect to cancel the Contract or proceed with the transaction without the correction of the items disapproved.

What if the seller agrees to correct some, but not all, of the items disapproved?

If the seller agrees to correct some, but not all, of the items disapproved, the buyer has two options under the Contract as written: cancel the Contract or accept the property with the

correction of only those items seller agreed in writing to correct. If the buyer wishes to continue to negotiate the items, the buyer must get an agreement, in writing, signed by all parties, extending the time periods for cancellation (sample extension language is available on AARonline.com). If the buyer fails to obtain a written agreement extending the time periods in which the buyer may cancel, the buyer will be obligated to proceed with the transaction without correction of the items that seller has not agreed to in writing.

Can the buyer change the buyer's election once the election has been made?

Probably not. If the buyer reasonably disapproves of items, the buyer must state in the notice that the buyer elects to either immediately cancel the Contract or provide the seller an opportunity to correct the items. If the buyer gives the seller an opportunity to correct the items, the buyer has made the election and can no longer "immediately cancel" the Contract. This is certainly true if the seller has responded and agreed to correct the items. However, whether the buyer can change the election before the seller responds is probably less clear-cut. To avoid this dilemma, make sure the buyer has taken the time allotted to perform all inspections and investigations and has thoroughly considered the options before making an election.

If the buyer does not disapprove of any items and requests no corrections, should the Buyer Inspection Notice and Seller's Response form still be used?

Yes. The buyer should check the box on the form indicating that the buyer has conducted the desired inspections and that the Premises are accepted in the present condition and sign the form. The seller's signature on the form is not necessary.

The AAR Contract clearly sets forth the procedure to be followed during the inspection period and the time period for the seller's response thereafter. Brokers should be familiar with the process and insure that a signed writing evidences any agreed upon deviation in the process.

Michelle Lind is General Counsel to the Arizona Association of Realtors, and a State Bar of Arizona board certified real estate specialist.

Time-share scam

Continued from page 1

husband, Michael Upton, was sentenced to 2 years' incarceration. Todd Gonczy, Donald Gonczy's oldest son, who pleaded guilty at the outset of this case and assisted in the prosecution of his father and siblings, received a sentence of 5 years' probation. Peter Train and Buck Shelton, two other participants, who were not related to the Gonczy family, received sentences of 2 years and 3 years' and 5 months' imprisonment respectively.

Two other defendants, S. Joel Epstein and John Handel, were convicted following a 4-week trial and will be sentenced later this fall. Epstein, whose sentencing was scheduled for October 29, 2002, was convicted of conspiracy, mail fraud, wire fraud and money laundering. Handel, 51, of Yarmouth, was convicted on five counts of mail fraud for his role in this scheme. Handel will be sentenced on December 11, 2002.

In addition to the defendants who have already been convicted, one other individual, Roger Canzano, an attorney in Michigan, is facing trial in January 2003 on these charges. Two others who were indicted, Vincent Corey and Edward Loney, are fugitives.

Sally Z. Williams, age 47, of Las Vegas, Nevada and Donna M. John, age 43, of Marion, Ohio, were subsequently indicted by a federal grand jury on charges of conspiracy to commit mail fraud and wire fraud. Williams was also indicted on 30 counts of mail fraud.

According to the evidence presented at trial, Donald Gonczy, Joel Epstein, and their co-conspirators, established a complex network of more than a dozen companies designed to persuade time-share owners who were interested in selling their time-shares to purchase a \$399 "appraisal" of their time-share. The scheme passed time-share owners through a series of boiler rooms to complete the fraud. First, the defendants established a number of purported "buying companies" based in Florida and Texas which contacted time-share owners and made a host of misrepresentations, including that they

would buy the person's time-share if the owner obtained an appraisal and that they would reimburse the owner for the appraisal fee at the time of closing. The buying companies falsely claimed that they received no fees from the appraisal companies and had no part in the appraisal process.

Once the buying company persuaded the time-share owner into selling the time-share, the buying company referred the time-share owner to a purportedly independent service, Multi-State Listing Service ("MLS"), which in fact was a second boiler room. The time-share owner would be told that the MLS would put the time-share owner in touch with "independent and internationally recognized" appraisal companies.

MLS then provided the time-share owner with three "independent" appraisal companies supposedly with personnel in the area of that person's time-share. Every one of these appraisal companies was phoney and established solely to execute this fraud scheme. The "appraisal" companies were run by Donald Gonczy's children, close friends, or former telemarketers from the boiler rooms. Jill Gonczy Upton and her husband, Michael Upton, ran one of the appraisal companies, known as RCI Appraisals located in Hyannis, Massachusetts. Scott Gonczy, another son, operated Interval International Appraisals ("IIA") in Providence, Rhode Island. Other "appraisal" companies were opened in Florida, Michigan, Nevada, Georgia, Louisiana, and Windsor, Ontario.

At trial, the government proved that after speaking with an MLS representative, and selecting an appraisal company, the time-share owner was next contacted by a third boiler room operation called the Appraisal Referral Center ("ARC"). The ARC telemarketers falsely represented that they were actually calling from the appraisal company the time-share owner had selected. In this call, the time-share owner was coaxed, through more misrepresentations, into providing a credit card number. At this point the time-share owner was billed approximately \$399 for the appraisal.

Eight weeks later, the appraisal companies mailed the time-share owner a bogus two-page "appraisal" that falsely represented that the time-share had been inspected as part of the appraisal process. The government proved at trial that these reports were simply printed off a database at a cost of just \$7.50 to the appraisal company. John Handel signed roughly 10,000 fraudulent appraisals for RCI and IIA, and was paid \$5 for each report he signed. Handel signed several thousand reports using the fictitious name James Rose. The appraisal reports issued by these purportedly "independent" companies had virtually identical formats and standard language, and often contained the same typographical errors. The bank records at trial proved that the defendants sold \$15,409,000 in fraudulent appraisals to approximately 38,000 time-share owners located throughout the country.

The evidence at trial also established that Epstein and Vincent Corey ran the financial operations of these enterprises, resulting in Epstein's money laundering convictions for using the proceeds of illegal activity to further a mail fraud and wire fraud scheme.

The vast majority of the more than 38,000 time-share owners who purchased appraisals as part of this scheme either never received a purchase offer from the buying company or received "low-ball" offers that were 15 percent of the "appraised" value. When time-share owners pressed the buying companies for answers, they were confronted with unreturned phone calls, answering machines, disconnected numbers or a litany of excuses for the delay in processing their paperwork. Only 11 out of the 38,000 people over the course of the five years the scheme operated were able to sell their time-shares to the buying companies.

At their upcoming sentencings, Epstein and Handel each face maximum penalties of 5 years' imprisonment and a \$250,000 fine on each mail fraud and wire fraud conviction, as well as Epstein's conspiracy conviction. In addition, Epstein faces maximum penalties of 20 years' imprisonment and a \$500,000 fine on each of the five money laundering counts.

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Electronic notary

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to paste this token into a computer that has a specific type of software loaded on it that will allow the notary to view whatever document is being notarized and then sign it so that it is locked down using the mathematical process that is stored in the token.

One of the issues that the secretary of state has been working on is to encourage the adoption of specific formats nationally. One of the difficulties in moving to electronic forms is that there are several different types of document formats, e.g., Word and WordPerfect, with these formats constantly changing over time. Also, there are a variety of spreadsheets, forms, and CAD drawings, and conceivably an entire range of different types of documents that can

be signed and notarized.

One of the difficulties is making certain that whatever document is signed will be viewable over its legal life, and especially when dealing with the notarization process, you have to be concerned about the longevity of the process and being able to verify that a document was notarized over a long period of time.

Mr. Savage indicates that in attempts to obtain standardization agreements between the states, the secretary of state's office is trying to focus on processes, which will make it possible to validate the notary over time and access the document and check the validation of the notary later on. Many states are relying upon the Uniform Electronic Transaction Act, which is somewhat vague about the standards, and what Arizona has at-

tempted to do is to ensure that the methods are specific, workable, secure, and accessible over time.

Mr. Savage specifically noted that an effort was made to adopt procedures which are not tied to specific technology because that technology will change over time. The effort has been made to identify the standards and process that will insure that whatever technology is used, the necessary criteria are met. In that way, the state hopes to retain flexibility as the technology changes.

If the rule adoption process goes as hoped, early in 2003 we should be able, at last, to utilize electronic notarization.

Thomas Stoops is a partner in the firm of Stoops, Denious & Wilson, PLC and is a State Bar Certified Real Estate Specialist.

ARIZONA

REAL ESTATE BULLETIN

Arizona Department of Real Estate
2910 N 44th Street, Phoenix AZ 85018-7256